

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

ANTONIO SERNA,

Plaintiff,

v.

Civ. No. 23-76 MLG/GJF

FNU ANDRADE,

Defendant.

ORDER ON PLAINTIFF'S MOTION TO SET TRIAL

THIS MATTER comes before the Court on Plaintiff Antonio Serna's Motion to Set Trial [ECF 20]. Having reviewed the Motion and being fully advised, the Court finds that the Motion is premature and will be DENIED.

In his short, one-paragraph motion, Plaintiff alleges that Defendant Dr. Andrade is unconcerned about his worsening injuries and that pain relief cream is ineffective. ECF 20 at 1. As a result, Plaintiff "humbly ask[s] the Court to either rule in [his] favor and award [him] . . . \$250,000 and the best medical care or set a trial date." *Id.*

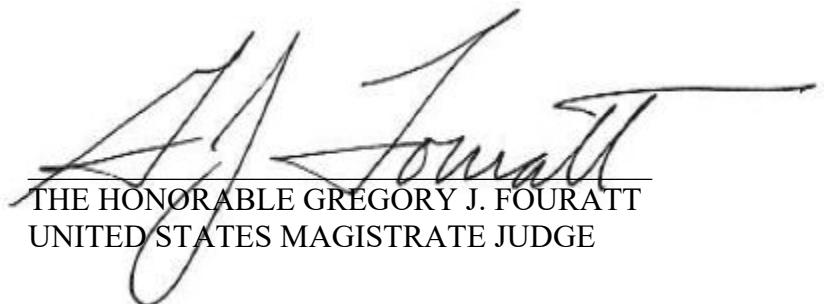
Plaintiff's request that the Court rule in his favor is not an isolated one. Indeed, he has sought similar relief on at least four other occasions. ECF 18 at 1 ("I move the Court grant me favor in this suit and award me \$250,000.00 plus proper medical care."); ECF 21 at 1 (describing allegations and stating, "I believe this is more than enough evidence to rule in my favor"); ECF 24 at 1 ("I humbly ask the Court to rule in my favor."); ECF 35 at 1 ("I ask the Court to judge in my favor. There is no dispute as to the facts of the case."). The Court previously denied each of these requests as premature because the parties had not yet developed the factual record through discovery. *See* ECF 40 at 4 (Proposed Findings and Recommended Disposition "PFRD" reasoning that "[b]ecause the parties [had] yet to engage in discovery that [would] guide the answer" to

whether Plaintiff is entitled to a ruling in his favor, “an informed ruling” on his motions could not be made); ECF 43 (Amended Order Adopting PFRD).

The case has since progressed. In lieu of discovery, Defendant filed his *Martinez* Report [*see* ECF at 45], and the parties have filed cross-motions for summary judgment [*see* ECFs 42; 47]. In other words, the case is now poised for a determination on the merits, which will dictate whether Plaintiff is entitled to judgment in his favor and/or trial. But until the Court considers the *Martinez* Report and decides the summary judgment motions, Plaintiff’s bare requests that the Court rule in his favor or set the case for trial remain premature. *See White v. York Int’l Corp.*, 45 F.3d 357, 360 (10th Cir. 1995) (“The very purpose of summary judgment is to determine whether trial is necessary.”).

IT IS THEREFORE ORDERED that Plaintiff’s Motion to Set Trial [ECF 20] is **DENIED** as premature.

SO ORDERED.



THE HONORABLE GREGORY J. FOURATT
UNITED STATES MAGISTRATE JUDGE